

### **Remarks**

The Applicant thanks the Office for the consideration given the present application in the last Detailed Action. With the foregoing amendments and the ensuing remarks, the Applicant has endeavored to respond most properly to each of the points raised by the Office to ensure that the specification and claims now presented are allowable in all respects. With this in mind, the Applicant respectfully requests that the Office review and allow the current specification and claims.

In brief summary, the present application was filed with 43 claims in total with claims 1 and 31 standing independently. Claim 1 was previously canceled, and claims 8, 23, 24, 37, and 42 have been canceled herewith such that claims 2-7, 9-22, 25-36, and 38-41 are presented for consideration. Claims 11, 16, and 22 have been rewritten to stand independently, and a plurality of claims have been amended for, among other things, proper dependency.

### ***Objection to Specification for Addition of New Matter / Rejection of Claim 20 Under 35 U.S.C. § 112, First Paragraph***

The Office objected to the specification as amended on August 30, 2007 based on the conclusion that the addition of “a global positioning unit retained relative to the digestion chamber”, which was inserted into claim 20, constituted new matter. For the same reason, claim 20 was rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The Applicant was required to cancel the same in reply to the Office Action.

To expedite the allowance of the application, the Applicant has amended claim 20 to delete, among other text, “a global positioning unit retained relative to the digestion chamber”. The Applicant has inserted “wherein the means for communicating a malfunction report comprises a communications unit and wherein the communications unit further comprises a means employing global positioning system technology for enabling a reporting a location of the composting system.”

It is respectfully submitted that the amended text does not comprise new matter. The current claim limitations are clearly supported by the original disclosure. For example, looking to the paragraph beginning on page 21, line 18, the specification describes the “communications unit 58” as being “effective for communicating a malfunction report to a remotely located receiver.” Further, the original specification discloses that “the communications unit 58 could further employ global positioning system technology for additionally reporting to the remotely located receiver the particular location of the composting system 10.” Still further, on page 10, lines 16-19, the specification notes that “the composting system can incorporate a means for determining a location of the composting system, such as a global positioning device, and the malfunction report can include an indication of the location of the composting system.”

Since Applicant has deleted any subject matter that could be interpreted as comprising new matter and since it is submitted that amended claim 20 complies with 35 U.S.C. § 112, first paragraph, the Office’s reconsideration and allowance of the application in these respects are respectfully requested.

***Claim Rejections Under 35 U.S.C. § 112, Second Paragraph***

The Office rejected claims 11, 28-30, 39 and 40 under Section 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter that applicant regards as the invention.

With respect to claim 11, the Office noted that the language “whereby organic material will tend to from the primary subchamber ...” was not clear. In response, the Applicant has amended claim 11 to insert the term “pass” between “to” and “from” whereby the claim now provides in relevant part, “whereby organic material will tend to pass from the primary subchamber ... .” With this, the claim is complete in specifying that organic material will tend to pass from subchamber to subchamber. With the correction of this omission, it is respectfully submitted that claim 11 is clear and complies with Section 112, second paragraph in all respects.

Regarding claim 28, the Office concluded that it was unclear whether it is the shredding unit that comprises both counter-rotating shredding shafts and a ferrous material separator or if the ferrous material separator is a component of the composting system and not a component of the shredder. In response, the Applicant has amended claim 28 to make clear that “the shredding unit comprises intermeshed, counter-rotating shredding shafts and a ferrous material separator disposed to receive material shredded by the shredding shafts for separating ferrous material from organic material prior to a receipt of the organic material into the digestion chamber.” With this, the claim positively recites that the shredding unit includes the ferrous material shredder. Also, from claim 28 as amended, the interrelation of the ferrous material separator with the remainder of the composting system is further clarified. To be complete, it should be made of record that, although claim 28 clarifies that the ferrous material separator is a

component of the shredding unit, the shredding unit and thus the ferrous material separator are elements of the overall composting system.

As to claims 39 and 40, the Office wrote that it was “not clear how if the malfunction report communications a malfunction of a portion of the composting system, i.e., breaking or jamming of the shredding unit, or a malfunction in the shaft 16 (Disclosure pg. 22).” To the extent that the rejection is understood, the Applicant responds by stating that the malfunction report can include a malfunction of the shredding unit, a malfunction of the shaft, or other possible malfunctions in the composting system.

Also regarding claims 39 and 40, the Office inquired how the malfunction report includes an indication of the location of the composting system. Still further, the Office found that because “the claims do not positively recite the composting system to be mobile or portable, therefore the locating of the composting system is dependent upon operator choice and therefore relative.” In response, the Applicant first notes that amended claim 39 specifies that the means for communicating a malfunction report comprises a communications unit and that the communications unit includes “a means employing global positioning system technology for determining and enabling a reporting a location of the composting system.” With this, it is clear that the malfunction report includes an indication of the location of the composting system by use of global positioning system technology incorporated into the communications unit.

With respect to the Office’s concern that “the locating of the composting system is dependent upon operator choice and therefore relative” because the system is not claimed as being mobile or portable, the Applicant notes that, whether the system is claimed as being mobile or portable, the meaning and boundaries of claim 39 are clear; by employing global

positioning system technology, the communications unit can determine and report the location of the composting system. The reporting of the location of the composting system in the malfunction report enables the recipient of the report, such as a repair person who may not be previously aware of where the composting system was placed, to learn the location of the composting system. This is true whether the composting system is mobile or immovable—assuming rendering such a system immovable is possible. Claims 39 and 40 thus meet the requirements of Section 112, second paragraph. The Office's reconsideration and allowance of claims 39 and 40 in this regard are requested.

***Claim Rejections Under 35 U.S.C. §§ 102, 103***

With respect to the patentability of the claims, the Office rejected claims 8-10, 12, 14, and 15 as being anticipated by U.S. Patent No. 5,587,320 to Shindo et al. Claims 8-10, 12, 13, 22-28, and 31-33 were rejected as being disclosed by U.S. Patent No. 6,399,366 to Seagren. Additionally, claims 2-8, 16, 19, 21, 22, 25-27, 31-38, and 41-43 were found to be obvious in view of the combined references of U.S. Patent No. 6,071,740 to Kerouac and Shindo et al. or Seagren. It is believed that the Office did not reject claims 11, 20, 29, 30, 39, and 40 as to patentability under Sections 102 and 103. Therefore, under proper Office practice, it is believed those claims would be allowable provided the rejections under Section 112 as to claims 11, 20, 29, 30, 39, and 40 are overcome, which is believed to be the case.

- *Independent Claim 11 and dependent claims 2-7, 12-15, and 25-30*

It is respectfully submitted that claim 11, which has been amended to stand

independently, patentably defines over the cited art. No prior art reference or combination thereof teaches or renders obvious providing, among other things, a composting system with a digestion chamber having an input aperture, a first intermediate aperture, a second intermediate aperture, and an exhaust aperture “wherein the input aperture, the first intermediate aperture, the second intermediate aperture, and the exhaust aperture sequentially decrease in effective height”. Advantageously, that sequential decrease in height in the apertures between the subchambers causes organic material to “tend to pass from the primary subchamber into the secondary subchamber, from the secondary subchamber into the tertiary subchamber, and from the tertiary subchamber through the exhaust aperture in response to a rotation of the auger shaft and a concomitant rotation of the at least one mixing vane”. Based on the foregoing and since the Office did not reject claim 11 with respect to anticipation or obviousness and since proper patent practice would have called for such a rejection if the Office deemed the claim not allowable, it is believed that claim 11 is in condition for allowance.

It is also submitted that claims 2-7, 12-15, and 25-30 are allowable in that each depends from allowable base claim 11 and because each adds patentable limitation thereto. With respect to claims 2 through 7, 34, and 35, which have limitations directed with increasing detail relative to hydraulic power for the composting system, the Office has noted that the cited art fails to disclose a hydraulically powered system. However, the Office found the claims unpatentable since, according to the Office Action, the Applicant had not positively recited the criticality of the hydraulic power unit. To the contrary, the Applicant did emphasize the critical benefits of hydraulic power in the original specification. In the paragraph beginning on page 27, line 18, of the original specification, the Applicant wrote that “the hydraulic shredder motors 100, hydraulic

conveyor motor 102, and the hydraulic auger motor 104 can all be powered by a single hydraulic power unit 22. Advantageously, *under such a construction, all power and control mechanisms of the composting system 10 can be disposed at a single end of the composting system 10*, namely to the power and control compartment 50 side of the barrier wall 15. *With this, construction, maintenance, repair, and operation of the composting system 10 are rendered more convenient and more efficient.* Furthermore, by employing hydraulics to control and operate the input conveyor mechanism 28, the shredding unit 24, and the auger shaft 16, the control and power system of the composting system 10 is notably simpler, more compact, and more durable than the arrangements of the prior art.” (Emphasis supplied.) Indeed, the claims specify the structure deriving from these benefits. For example, claim 6 requires that “the hydraulic auger motor, the hydraulic shredding unit, the hydraulic shredding motor, the hydraulic input conveyor mechanism, and the hydraulic input conveyor motor are disposed adjacent to the input end of the digestion chamber”. Since the prior art does not teach or render obvious the limitations of claims 2-7 and particularly since those claims include structural limitations that give marked advantages over prior art constructions, the Office’s reconsideration and allowance of the claims are requested.

Dependent claim 13 has been amended to emphasize the additional patentability of the limitations therein. As amended, claim 13 provides that the composting system has mixing vanes retained relative to the auger shaft that “pass immediately adjacent to a lower portion of an inner wall surface of the digestion chamber and that cooperate to provide a substantially constant mixing surface immediately adjacent to the lower portion of the inner wall surface of the digestion chamber over an entire length of the respective subchamber”. Seagren does not teach

or render the claimed vane configuration obvious. The auger in Seagren does not under any reasonable interpretation come immediately adjacent to a lower portion of the inner wall surface of a digestion chamber and does not provide a substantially constant axial mixing surface. Instead, Seagren's auger appears to be disposed in a tube and, in any case, is significantly spaced from the lower portion of the inner wall surface of the chamber.

Claims 14 and 36 have been amended to define even more clearly over the prior art. Particularly as amended, claims 14 and 36 require a "separate vent operably coupled to each of the subchambers". Even assuming that Shindo discloses a vent, it cannot in fairness be interpreted to teach or suggest providing a separate vent for each subchamber as claims 14 and 36 demand.

- *Independent claim 16 and Dependent Claims 9, 10, and 17-21*

Newly independent claim 16 and independent claim 31 specify a composting system with, inter alia, "at least one malfunction sensor for sensing a malfunction of the composting system". Contrary to the Office's indication, Kerouac's temperature and CO<sub>2</sub> sensors cannot properly be interpreted as comprising a malfunction sensor. Sensing temperature does not equate to sensing a malfunction. Indeed, it does not seem that Kerouac contemplates sensing a malfunction. Merriam-Webster's Online Dictionary defines "malfunction" as "to function imperfectly or badly : fail to operate normally". The mere existence of a temperature is not a malfunction such that Kerouac cannot properly prevent the patentability of claim 16. Indeed, employing the doctrine of claim differentiation, claim 9's specification of a temperature sensor



and a heating element make clear that such structure would not comprise a malfunction sensor under Applicant's claimed invention.

Even beyond the foregoing, there is simply nothing cited by the Office that could teach or render obvious a malfunction sensor operably coupled to the auger shaft or a malfunction sensor operably coupled to a shredding unit. It is respectfully submitted that there is no need to specify or prohibit a direct coupling or intermediate structure between the sensor and the auger or shredding unit. The claims are clear and patentable whether the sensor is directly coupled or otherwise operably associated to sense a malfunction. The function and advantage of the claimed structures exists in either case.

Claim 19 has been amended to define still more clearly over Kerouac by specifying that the "remotely located receiver ... is physically displaced from the composting system". Kerouac's operator station is not. For example, one can refer to column 10, lines 28-34, where Kerouac writes, "Finally there is an operator station, and a controller that is connected for sensing or control inputs to at least the temperature sensors, to the drum rotating mechanism, to the fan, and to the operation said means for rotating said drum, said means for exchanging air, and the operator station." It is clear that Kerouac would teach one skilled in the art to provide an operator station forming a physical part of the composting system. This does not teach or render obvious Applicant's claimed transmission of a malfunction report to a physically displaced remotely located receiver. The same argument applies to claim 38.

Even more clearly, claim 20's requirement for the user of "global positioning system technology for enabling a reporting a location of the composting system" cannot under any reasonable interpretation be said to be taught or suggested by the cited art. No cited reference

prevents the patentability of such a global positioning arrangement. This argument also applies to claim 39.

Still further, claim 21 specifies that the remotely located receiver to which the malfunction report is communicated depends on the type of malfunction. With this, a party capable of repairing the shredder can be notified if the shredder malfunctions while a party capable of repairing the auger can be notified if the auger malfunctions. No fair interpretation of the prior art could prevent the patentability of such an arrangement. This applies also to claim 40.

- *Independent claim 22*

The prior art does not disclose or render obvious amended claim 22, which specifies, among other things, a supply source in fluidic communication with at least one supply aperture disposed along the auger shaft or the at least one mixing vane. Even assuming Kerouac teaches the introduction of fluids, there is nothing in the disclosure that could fairly be interpreted to prevent the patentability of the claimed composting system with a supply aperture disposed along an auger shaft or a mixing vane.

### **Conclusion**

Because no cited reference identically discloses the claimed invention and because there is no suggestion in the art to modify or combine any of the prior art references to approximate the claimed invention, the Applicant most respectfully submits that the claims now presented are patentable over the cited art. With this in mind, the Office's reconsideration and allowance of

O'Connell Law Office  
Application No. 11/814,308

**PATENT**  
File Reference: POB-501US

the specification and claims are respectfully requested.

The Applicant believes that all issues raised in the Detailed Action have been responded to fully. However, if, after consideration of the above amendments and comments, there remain any open issues in this application that possibly can be resolved by a telephone interview, then the Applicant's undersigned attorney most respectfully requests that he be called to discuss and attempt to resolve those issues.

Dated: February 14, 2008

Respectfully submitted,

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<p>I hereby certify that this correspondence is being to the United States Patent and Trademark Office by use of the EFS-Web on this the 14<sup>th</sup> of February, 2008.</p> <p><u>/Thomas P. O'Connell Reg. No. 37997/</u> Thomas P. O'Connell, Esq.</p> <p><u>February 14, 2008</u> Date</p>